

NTSB Order No. EA-3988

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 24th day of September, 1993

Respondent .

Docket SE-11527

Respondent has appealed from an initial decision of Administrative Law Judge William R. Mullins, issued orally at the conclusion of an evidentiary hearing held on August 20, 1991.<sup>1</sup> By that decision, the law judge affirmed the Administrator's determination that respondent had violated sections 135.83(a)(3) and 91.9 of the Federal Aviation Regulations ("FAR," 14 C.F.R.)

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in connection with a January 27, 1988 nighttime visual flight rules (VFR) flight from Windsor Locks, Connecticut to Teterboro, New Jersey.<sup>2</sup> In addition, the law judge sustained a 20-day suspension of respondent's commercial pilot certificate, which had been ordered by the Administrator for such alleged FAR violations.

While it appears that respondent was using a Jeppesen chart (or charts) for navigational assistance during the flight in question,<sup>3</sup> he also had on board outdated New York and Boston Terminal Control Area (TCA) and New York Sectional charts, which he did not use. At the hearing, the Administrator maintained that FAR section 135.83(a)(3) required the use of current sectional and/or TCA charts, and that respondent had run afoul of that regulation because the Jeppesen charts he used, even if current, contained insufficient information to meet the

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<sup>2</sup>FAR § 135.83(a)(3) provides:

"§ 135.83 Operating information required.

(a) The operator of an aircraft must provide the following materials, in current and appropriate form, accessible to the pilot at the pilot station, and the pilot shall use them:

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(3) Pertinent aeronautical charts."

FAR § 91.9, which has since been amended and recodified as § 91.13(a), read:

"§ 91.9 Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

<sup>3</sup>It is unclear as to precisely which Jeppesen chart(s) were used by respondent on the flight. In this regard, we note that, while he indicated at the hearing that he utilized a New York TCA Communications chart (see Tr. 73), he has not confirmed or denied using any other Jeppesen charts.

regulation's requirement that he use "pertinent aeronautical charts."<sup>4</sup> In affirming the order of suspension, the law judge concurred with that view.

On appeal, respondent does not argue that sectional or TCA charts are not pertinent for VFR operations.<sup>5</sup> Rather, he asserts that the charts he used should be considered sufficient, or "pertinent," to his flight under section 135.83(a)(3), because of his extensive experience flying VFR from Windsor Locks to Teterboro.<sup>6</sup> In this regard, he has pointed out that such experience enabled him, without the aid of sectional or TCA charts, to circumnavigate the New York TCA and arrive safely at his destination by utilizing radio navigation and identifying a number of familiar visual reference points enroute.<sup>7</sup> On the

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<sup>4</sup>The § 91.9 violation with which respondent has been charged is not based on any specific allegations of carelessness, but is residual to the alleged violation of § 135.83(a)(3).

<sup>5</sup>Thus, the reasonableness of the Administrator's interpretation of the term "pertinent aeronautical charts" to include, at least, sectional or TCA charts in the case of VFR operations, is not at issue here. Compare Administrator v. Miller, NTSB Order EA-3581 (1992), where the Administrator determined that an airman whose air charter company had provided substituted service on behalf of a commuter operator was required to meet the §§ 135.243 and 135.244(a) certification and operating experience requirements for commuter air carrier pilots-in-command (which he did not), and the airman maintained that such an interpretation of those regulations was unreasonable.

<sup>6</sup>Respondent had flown that route several hundred times prior to the flight in question. Tr. 64.

<sup>7</sup>Specifically, respondent used VOR-DME radio navigation to get from Windsor Locks to the Carmel VOR and from there guided his aircraft into Teterboro Airport by following the Tappan Zee Bridge, Alpine Towers, George Washington Bridge and Meadowlands sports complex. Tr. 62-63, 77-78.

other hand, the Administrator maintains that air safety precludes reliance on a subjective test for determining under section 135.83(a)(3) whether a particular pilot used aeronautical charts that are "pertinent" for a VFR flight.

The Board is unaware of any prior cases in which this issue has been addressed. However, the Administrator's position that section 135.83(a)(3) sets forth a standard unrelated to a pilot's experience level on a particular route is certainly consistent with the clear language of that regulation, and respondent's contrary view, which is essentially an attempt to carve out an exception to the reach of the regulation, has little to commend it. While the Jeppesen charts may furnish data suitable for radio navigation,<sup>8</sup> they do not appear to contain sufficient information for VFR pilotage in the event of a radio equipment malfunction or other emergency necessitating visual reference to landmarks on the ground.<sup>9</sup> In such circumstances, even a pilot with extensive VFR flight experience on a certain route may be required to alter his usual flightpath and enter airspace with

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<sup>8</sup>The Board notes that there is no requirement that radio navigation be used on VFR flights. See Tr. 83-84.

<sup>9</sup>See Tr. 28, 45, 77. The record reflects that Jeppesen charts are generally used for instrument flight rules (IFR) flights and provide little topographical information compared with that found on sectional and TCA charts. See id. 24-25, 40-41, 73-74, 101-02; Exs. A-8 through A-10. Although some topographical features depicted on sectional and TCA charts may not be easily discernible at night, others--such as cities and towns, rivers, reservoirs, highways, airports, and lighted structures and towers--remain evident in nighttime VFR conditions. See Tr. 38-39, 89, 105.

which he is not wholly familiar. He might then be unable to utilize his customary visual guideposts, and, as a result, would need to refer to sectional and/or TCA charts in order to safely plot an alternate course.

Thus, the Board rejects respondent's view that a pilot's route experience should be considered in determining whether he has met the "pertinent aeronautical chart" requirement of FAR section 135.83(a)(3). We will, therefore, affirm the law judge's initial decision and the Administrator's order of suspension.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The 20-day suspension of respondent's commercial pilot certificate shall begin 30 days from the date of the service of this order.<sup>10</sup>

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

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<sup>10</sup>For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).